

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GLEN D. SMALE and
CARLA J. SMALE, h/w,**

v.

LUCENT TECHNOLOGIES, INC.

:
:
:
:
:
:
:

CIVIL ACTION

NO. 02-CV-2721

ORDER

AND NOW, this day of , 2003, upon consideration of Plaintiffs' Motion for Enlargement of Time for Discovery and Expert Witness Deadlines, and Defendant's Response thereof, it is hereby ORDERED that the dates for completion of discovery and service of expert reports are hereby enlarged for an additional thirty (30) days from the dates set forth in the Court's Second Rule 16 Status Conference Order dated June 10, 2003. All other deadlines shall remain the same.

Clifford Scott Green,
U.S. District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GLEN D. SMALE and
CARLA J. SMALE, h/w,**

v.

LUCENT TECHNOLOGIES, INC.

:
:
:
:
:
:
:

CIVIL ACTION

NO. 02-CV-2721

**PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME
FOR DISCOVERY AND EXPERT WITNESS DEADLINES**

Plaintiffs, Glen D. and Carla J. Smale, pursuant to Federal Rule of Civil Procedure 6(b), respectfully submit their motion for enlargement of discovery and expert deadlines as follows:

1. Plaintiffs brought this action to recover damages for injuries suffered by Mr. Smale as a result of Defendant's failure to disclose and remediate hazardous acids and toxic chemicals in its plant. As a result of Defendant's negligence, Mr. Smale suffered severe injuries and continues to receive medical care and treatment.

2. This action was originally filed by Andrew Zelonis, Esquire on May 7, 2002. Lucent filed an Answer to the Complaint on or about August 27, 2002, and the case was assigned to the calendar of the Honorable James Knoll Gardner on December 19, 2002.

3. From May 7, 2002 until March 25, 2003, the parties engaged in minimal discovery. On March 25, 2003, Plaintiffs' counsel, Andrew Zelonis, filed a Praecipe to Withdraw on March 25, 2003, and the undersigned filed an Entry of Appearance on behalf of the Plaintiffs that same date.

4. On May 1, 2003, Plaintiffs filed a Motion for Leave to Amend Complaint to more fully set forth Plaintiffs' claims for relief and factual allegations. Plaintiffs' Motion is currently pending.

5. On June 10, 2003, the Court issued its Second Rule 16 Status Conference Order, which states that all discovery shall be completed by September 5, 2003, and that Plaintiffs' expert witness reports must be served on or before September 5, 2003. Trial of this matter is scheduled to commence on February 23, 2004, and the parties have been formally attached for trial.

6. Since the time undersigned counsel entered his appearance, the parties have engaged in substantial written discovery and numerous depositions of the parties and witnesses. The depositions of the Smales were taken on August 11, 2003, but the transcript has not yet been made available. Similarly, during the past several weeks, a number of depositions have been taken for which transcripts are not yet available.

7. Furthermore, during the depositions of William Crawford and Ed Mirosław, environmental health and safety employees of Defendant, it was stated that Dave Green and Jim Kerschner of Lucent may have relevant and material information regarding the subject claims. It is Plaintiffs' understanding that Lucent intends to make Mr. Green and Mr. Kerschner available for deposition in the near future, although a date has not yet been confirmed. Plaintiffs anticipate that a thirty (30) day enlargement of time for both the discovery and expert witness deadlines will be sufficient to complete the outstanding discovery and serve expert reports.

8. Plaintiffs' counsel has discussed this matter with defense counsel and attempted to resolve this issue without the need for Court intervention. As demonstrated by the attached exhibits, defense counsel is not authorized by his client to enter into a stipulation regarding discovery and expert witness deadlines, thus necessitating the instant motion.

9. Plaintiffs have worked diligently over the summer to complete as much discovery as possible and comply with the outstanding deadlines. Unfortunately, due to summer schedules, the complexity of this case, numerous witnesses, and voluminous documents, Plaintiffs respectfully request the Court permit them an additional thirty (30) days to complete discovery and serve their expert reports. Plaintiffs respectfully submit that no prejudice will be caused by this short extension of time and that the interests of justice may be preserved.

WHEREFORE, Plaintiffs, Glen D. and Carla J. Smale, respectfully request this Honorable Court grant them an additional thirty (30) days within which to complete discovery and serve their expert reports and for such other and further relief as the Court deems just and proper.

OMINSKY & OMINSKY, P.C.

By: _____
Andrew M. Ominsky, Esquire
Two Penn Center Plaza, Suite 1210
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102
(215) 568-4500
Attorney for Plaintiffs

Dated: August 22, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Enlargement of Time for Discovery and Expert Witness Deadlines was served upon the following party by U.S. first class mail, postage prepaid on the date set forth below:

Thomas P. Bracaglia, Esquire
Kelly, McLaughlin, Foster, Bracaglia,
Daly, Trabucco & White, LLP
1617 John F. Kennedy Boulevard, Suite 1690
Philadelphia, PA 19103
Attorney for Lucent Technologies, Inc.

Andrew M. Ominsky, Esquire
Douglas T. Ominsky, Esquire
Attorneys for Plaintiffs

Dated: August 22, 2003